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11/29/2000

Peter Gansen

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SUITE 340

RESTON, VA 20190

EXAMINER

COONEY, JOHN M

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The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/726,075  
Filing Date: November 29, 2000  
Appellant(s): GANSEN ET AL.

**MAILED**  
**NOV 09 2007**  
**GROUP 1700**

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Michael E. Whitham  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 9-19-07 appealing from the Office action mailed 10-27-06.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: Claims 70-74 are rejected, separately and alternatively, under 35 USC 102(e) as being anticipated by Kenndoff et al.(5,844,013) and under 35 USC 103 as being obvious over Kenndoff et al.(5,844,013).

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 70-74 are rejected under 35 U.S.C. 102(e) as being anticipated by Kenndoff et al.(5,844,013).

Kenndoff et al. disclose preparations of articles comprising adhered articles of polyurethane gel foams and polyurethane films reading on foams which read on the articles of appellants' claims (see column 4 line 38 - column 6 line 39, column 10

11-24, 54-63, and 66, as well as, in its entirety, column 14 lines 11-19, and column 20 lines 46-51, as well as, the entire document). The claims do not provide structural features to distinguish their molded articles/seat cushions, the urethane components are not defined so as to distinguish over those of the reference, and the adhesive properties between the layers defined by the reference are implicit and inherent to the materials utilized. Additionally, the seat cushions as defined by the claims do not differ from the materials of Kenndoff et al. despite Kenndoff et al.'s intended use of their materials as wound dressing materials. The polyurethane gel foam of Kenndoff et al. read on the polyurethane gel component of applicants' claims, and the polyurethane foam component of appellants' claims are readily envisaged from Kenndoff et al.'s disclosure at column 10 lines 10-24 of foam sheets, micro- and macroporous plastic sheets, and preference for polyurethane sheets. Further, the disclosure that combinations of these layers may be employed readily envisions and anticipates the additional layers of appellants' claims.

Appellants' indication in claim 73 and 74 that "said at least one polyurethane gel at least partially surrounds said polyurethane foam" and "said at least one polyurethane foam at least partially surrounds said polyurethane gel", respectively, does not serve to distinguish the products, as claimed, from the products of Kenndoff et al. in a patentable way. The articles of Kenndoff et al. are maintained to meet such a condition from the standpoint patentability.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 70-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenndoff et al.(5,844,013).

Kenndoff et al. disclose preparations of articles comprising adhered articles of polyurethane gel foams and polyurethane films as claimed by appellants (see column 4 line 38 - column 6 line 39, column 10 11-24, 54-63, and 66, column 11 lines 5-15, column 14 lines 11-19, and column 20 lines 46-51, as well as, the entire document). The claims do not provide structural features to distinguish their molded articles/seat cushions, the urethane components are not defined so as to distinguish over those of the reference, and the adhesive properties between the layers defined by the reference are implicit and inherent to the materials utilized. Additionally, the seat cushions as defined by the claims do not differ from the materials of Kenndoff et al. despite Kenndoff et al.'s intended use of their materials as wound dressing materials. The polyurethane gel foam of Kenndoff et al. read on the polyurethane gel component of applicants' claims, and the polyurethane foam component of applicants' claims are readily envisaged from Kenndoff et al.'s disclosure at column 10 lines 10-24 of foam sheets, micro- and macroporous plastic sheets, and preference for polyurethane sheets.

Appellants' indication in claim 73 and 74 that "said at least one polyurethane gel at least partially surrounds said polyurethane foam" and "said at least one polyurethane foam at least partially surrounds said polyurethane gel", respectively, does not serve to distinguish the products, as claimed, from the products of Kenndoff et al. in a patentable way. The articles of Kenndoff et al. are maintained to meet such a condition from the standpoint patentability.

Kenndoff et al. differs from appellants' claims in that it does not particularly require additional layers within its specific requirements. However, Kenndoff et al. does in its disclosure of its backing materials recites that combinations of its disclosed backing materials may be employed (column 10 lines 17-18). Accordingly, it would have been obvious for one having ordinary skill in the art to have employed combinations of the backing materials of Kenndoff et al. within the teachings of Kenndoff et al. for the purpose of imparting their structural effects in order to arrive at the products of appellants' claims with the expectation of success in the absence of a showing of new or unexpected results.

#### **(10) Response to Argument**

Appellants' arguments have been considered. However, rejections are maintained.

Appellants' claims as they stand do not distinguish over the wound dressing compositions of Kenndoff et al. in a patentable way. The recitation that the article is a seat cushion is not sufficient in distinguishing the articles in the patentable sense. Difference based on the limitations provided in the claims have not been made evident

and are maintained to be not seen. It is maintained that the two polyurethane layers and additional layers are adequately accounted for in the rejection above such that anticipation is properly sustained. Anticipation is maintained to be evident because judicious, speculative and/or theoretical, selection is not seen to be evident. Further, the number of species or combinations within the delineated genus does not derogate from its teaching effect. Kenndoff et al.'s teaching, including column 10 lines 10-24, sets forth preference of micro- and macroporous plastic sheets with special preference being given to polyurethane sheets. Despite other non-foam polyurethane layers being disclosed by Kenndoff et al.'s teaching, this clear teaching of micro- and macroporous polyurethane plastic sheets can not be ignored. Additionally, it is reiterated that combinations of the materials disclosed are likewise anticipatory of appellants' claims' additional inclusion of films, textiles, or leather, and selection is seen and maintained to be operation from within the teachings of a single listing of species.

As to appellants' arguments regarding moldings, it is held that appellants' claims do not require the molding features discussed in appellants' arguments. Accordingly, these indicated differences do not negate or overcome the instant rejection. Additionally, it is held and maintained that appellants' arrangement of parts as defined by the claims does not serve to distinguish the claims in a patentable sense.

As to appellants' arguments in reply to the alternative rejection under 35 USC 103, examiner holds and maintains this alternative position to be additionally and separately proper. However, it is noted that since anticipation is the epitome of



obviousness, all the arguments set forth above in reference to the rejection under 35 USC 102(e) apply here, too, in support of examiner's alternative position of obviousness.

Further, it is held and maintained that the multilayer compositions as claimed by appellants are within the purview of the ordinary practitioner in the art having the teachings of Kenndoff et al. for the reasons as set forth above. Kenndoff et al.'s full disclosure is maintained to provision for and suggest multilayer compositions meeting those as defined by appellants' claims. Column 10 lines 17-18 provides for foam sheets and combinations thereof along with the other materials indicated, including mats, non-woven, knitted, or woven fabrics, which are indicative of textiles. It is seen to be well within the skill of the ordinary practitioner in the art to employ combinations of these materials to provide padding, strength, and multiplication of these effects through combinations in order to arrive at the products of appellants' claims. Additionally, since plastic sheets, foamed sheets, polyurethane sheeting materials, and combinations of the same as well as combinations of the same with other materials are all provided for within the teachings of Kenndoff et al., arriving at the combinations of layers as claimed from the teachings of Kenndoff et al. is maintained to be well within the skill of the ordinary practitioner in the art.

The following cites are additionally held to be relevant to the instant rejection:

- 1.) It is prima facie obvious to substitute equivalents, motivated by the reasonable expectation that the respective species will behave in a comparable manner or give comparable results in comparable circumstances. *In re Ruff* 118 USPQ 343; *In re Jezel*

158 USPQ 99; the express suggestion to substitute one equivalent for another need not be present to render the substitution obvious. *In re Font*, 213 USPQ 532.

2.) The mere duplication of parts has no patentable significance unless a new and unexpected result is produced.) *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). {MPEP 2144.04 VI. B.}.

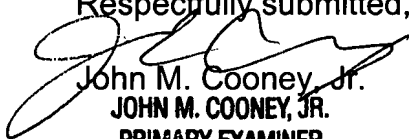
Further, it is noted that appellants' assertions that the invention of their claims is concerned with the realization of articles having spring and damper mechanical does not serve to distinguish the invention of their claims in the patentable sense, nor do they serve to substitute for a fact based showing of new or unexpected results attributable to differences in their claims.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
John M. Cooney, Jr.  
JOHN M. COONEY, JR.  
PRIMARY EXAMINER  
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